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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4493 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO.LTD.

Versus

MANSARADEVI SHERBAHADUR GURKHAWD/O SHERBAHADUR L GURKHA

Appearance:

1. First Appeal No. 4493 of 1997

MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
MR SURESH M SHAH for Respondents No. 1-3
MR MEHUL S SHAH for Respondents No. 1-3
SERVED BY AFFIX.(N) for Respondent No. 4
NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.H.KADRI

Date of decision: 18/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, at the instance of the Insurance Company challenging the judgment and award passed by the Motor Accident Claims Tribunal, Kutch at Bhuj, under Section 163-A of the said Act. It is pertinent to note that the said award under Section 163-A of the said Act has been passed below application Exh.6, which was separately numbered as Interim R. Application No.653 of 1996 in the main claim petition under Section 166 of the Act numbered as Motor Accident Claim Petition No.955 of 1996.

2. As a result of the hearing and discussion and in view of the clear law laid down by the Supreme Court to the effect that the remedy available to the claimant under Section 163-A of the Act does not result in an interim award, and that the remedy under Section 163-A is merely an alternative remedy to an application under Section 166 of the Act, a consensus has been arrived at between the learned counsel for the respective parties [after due consultation with their respective clients], on the basis of which, the following directions are given:

(A) The impugned award under Section 163-A of the Act dated 26th August 1997 is hereby quashed and set aside.

(B) The respondents-original claimants shall be at liberty to pursue their claim petition under Section 166 of the Act, namely, Motor Accident Claim Petition No.955 of 1996.

(C) The respondents-original claimants shall also be at liberty to prefer an application for interim compensation under Section 140 of the said Act.

(D) Any amount that may be awarded to the respondents-original claimants on an application under Section 140 of the Act, shall be subject to adjustment against the amount which may be awarded to the claimants in an award under Section 168 of the Act. It is clarified that the claimants have already received Rs.50,000/- under the interim orders of this Court, and that any amount awarded to the claimants by the Tribunal by an order under Section 140 shall not thereafter be independently executable.

(E) The amount, which has deposited with the Tribunal by the appellant-Insurance Company [which is in excess of Rs.50,000/- withdrawn by the claimants] is reported to have been invested by the Tribunal under the interim orders of this Court. So far as this amount is concerned, the appellant-Insurance Company

shall be at liberty to exercise an option to apply to the Tribunal for refund/restitution.

3. This appeal is, therefore, allowed to the aforesaid extent with no order as to costs. Decree accordingly.

4. On the facts and in the circumstances of the case, it would be appropriate for the Tribunal to expedite the hearing of the main claim petition under Section 166 of the Act and to dispose of the same as early as possible in consonance with the date of its filing and the work-load before the Tribunal.

January 18,2002 (Y.B. Bhatt, J.)

(M.H. Kadri, J.)

(swamy)